

EPIC GAMES, INC.

V.

C.R.

5:17-cv-534-H

SECOND DECLARATION OF CHRISTOPHER M. THOMAS

EXHIBIT 5



Cary-based Epic Games alleges that Fortnite video game cheaters create and distribute codes that give players and advantage. By Epic Games

BUSINESS

Mom's letter didn't work; Epic's 'Fortnite' lawsuit against 14-year-old can continue



BY RAY GRONBERG

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August 07, 2018 06:50 PM

Updated August 08, 2018 11:40 AM

CARY — It's anything but game over for the developers of "Fortnite" in their legal battle with a Delaware teenager who bragged on YouTube about his use of cheat software in the popular third-person shooter game.

Senior U.S. District Court Judge Malcolm Howard in mid-July sided with Epic Games in allowing the company to keep pursuing its lawsuit against [REDACTED] who on YouTube goes by the nickname "Sky Orbit."

So far in court, Epic "has stated a plausible claim" for copyright infringement, breach of contract and other legal transgressions, Howard said in ruling for the Cary game studio.

The case against [REDACTED] — now called only "C.R." in court documents after a complaint from his mother to the judge — is one of a [spate of copyright-infringement lawsuits Epic filed last fall](#) in hopes of tamping down cheating in "Fortnite."

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The [REDACTED] case quickly got the most attention of the bunch in gaming circles because his mother, Lauren Rogers, wrote Howard to accuse Epic of "using a 14-year-old child as a scapegoat to make an example of him."

[REDACTED] as Sky Orbit, also fueled the notoriety by posting a [video on YouTube in which he admitted cheating](#) and attacked Epic because the studio filed complaints with YouTube that led it to take down two of his game-play videos that allegedly featured use of the cheat software.

"It was just a simple [aimbot, ESP wallhack](#)," he said of the modification he used, which makes it much easier for players of a shooter game to find and hit targets.

He added that he had downloaded the modification from the internet, and that "Fortnite" cheats are ... everywhere."

Epic, of course, takes a dim view of all that and argues the use of cheat software violates the terms of the licensing players agree to when they [open an Epic Games user account and play "Fortnite."](#)

"Fortnite's" license includes a clause that forbids attempts by players to "create, develop, distribute or use any unauthorized software programs to gain advantage in any online or other game modes."

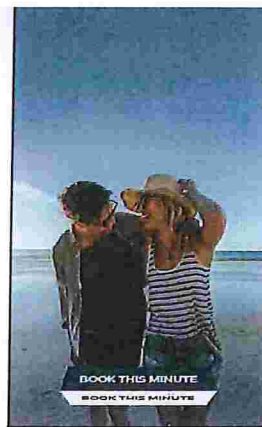
And game companies often face pressure from the players of popular titles to clamp down on illegal modifications. "Nobody likes a cheater," Epic said in its original complaint, filed in October. "And nobody likes playing with cheaters."

The [case file in Eastern District of North Carolina](#) federal court indicates that [REDACTED] and his mother have yet to hire a lawyer, or to respond in any formal way to the lawsuit except through Lauren Rogers' Nov. 15 letter to the judge.

Among other things, she argued that the "Fortnite" license isn't binding in this case because her son, at age 14, was a minor who by definition can't enter a contract. Epic itself specified that people under age 18 should get parental permission before signing up for an account, she noted.

Epic shot itself in the foot because its web site didn't include anything to enforce the parental-permission requirement, she said, adding that in her son's case, "parental consent was not issued."

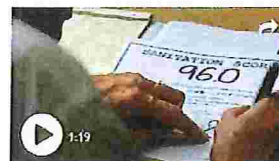
The judge, however, accepted Epic's counter-argument against what it called the [REDACTED]



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In other words, if a teen plays the game, he or she has to follow the rules, whether or not there's parental consent, Epic contends.

Howard's July 12 ruling gave [REDACTED] 14 days to file an answer to the lawsuit. As of Tuesday afternoon, the case file did not include a response.

The Sky Orbit YouTube channel did feature a new video on Tuesday that directed viewers to a second channel, "Sky Orbit Fortnite." [REDACTED] said the second channel is a backup and he would be "uploading all of my 'Fortnite' cheating videos" on that one because the original has two "copyright strikes" against it.

YouTube policy is that a channel that accumulates three strikes — each strike representing a copyright-violation complaint — can be shut down and its owner prevented from creating new channels.

Epic wants the judge to issue an injunction that bars [REDACTED] from cheating, and that orders not just the deletion of any cheat software he has but any of any his videos that show cheating in "Fortnite." The company is also seeking damages and attorney's fees.

Released last summer, "Fortnite" is currently one of the most popular games around and generated \$318 million in revenue for Epic in May alone, according to estimates from SuperData Research, an analytics firm that tracks that tracks the games industry.

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